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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TRP FUND IV, LLC, a Domestic Non-Profit
Corporation,

Plaintiff,

vs.

HSBC BANK USA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR THE
HOLDERS OF THE MERRIL LYNCH
MORTGAGE INVESTORS TRUST,
SERIES 2006-A3 a National Banking Entity;
DANIEL D. RAMAGE, JR., an individual;
and DOES I through X, inclusive; ROE
ENTITIES XI through XX,

Defendants.

CASE NO. 2:16-cv-01826-GMN-CWH

**MOTION TO REMAND CASE TO
STATE COURT**

COMES NOW, Plaintiff, TRP FUND IV, LLC, by and through its counsel of record,
JOHN HENRY WRIGHT, ESQ., of THE WRIGHT LAW GROUP, PC and hereby moves this
Honorable Court pursuant to 11 U.S.C. §1447 (c) to remand the instant case back to the Eighth
Judicial District Court for Clark County, Nevada. The removal by Defendant HSBC BANK USA,
NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF THE MERRIL LYNCH
MORTGAGE INVESTORS TRUST, SERIES 2006 was not within 30 days of receipt by service
or otherwise of the operative complaint in this matter as required under 11 U.S.C. § 1446 (b)(1)

///

1 and Defendant did not obtain consent of all other Defendants as required under 11 U.S.C. §
2 (b)(2)(A).

3 Dated this 5th day of August, 2016.

4 THE WRIGHT LAW GROUP, PC

5 /s/ John Henry Wright, Esq.
6 JOHN HENRY WRIGHT, ESQ.

7 Nevada Bar No. 6182

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Attorneys for Plaintiff

TRP FUND IV, LLC.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I.**

12 **INTRODUCTION**

13 Plaintiff TRP FUND IV, LLC ("TRP") is the current record owner of a parcel of property
14 commonly known as **2721 Evening Sky Drive, Henderson, NV 89052, APN # 191-12-512-023**
15 (the "Property"). The Property was foreclosed on February 18, 2014 and sold to TRP. On or about
16 March 5, 2014, the resulting foreclosure deed was recorded in the Official Records of the Clark
17 County Recorder as Instrument Number 20140305:01824 ("Foreclosure Deed"). TRP then
18 commenced this litigation in the Eighth Judicial District Court for the County of Clark, State of
19 Nevada on or about April 29, 2016 as case number A-16-735894-C. TRP proceeded against the
20 first deed of trust holder, Defendant HSBC BANK USA, NATIONAL ASSOCIATION, AS
21 TRUSTEE FOR THE HOLDERS OF THE MERRIL LYNCH MORTGAGE INVESTORS
22 TRUST, SERIES 2006-A3 ("HSBC"), and the prior owner, Defendant DANIEL D. RAMAGE, JR.

23 On or about May 26, 2016, HSBC received a copy of the summons and Complaint at its
24 McLean, Virginia main office. ECF 1-2 at p 2. On June 15, 2016, HSBC appeared in the state
25 court case by way of filing a Notice of Appearance. ECF 1-3 at p.11-13. HSBC refused to answer
26 the Complaint or file the procedurally required motion to dismiss for insufficiency of process or
27 service of process and, instead, removed the matter to the United States District Court for the
28 District of Nevada under diversity jurisdiction on August 1, 2016. ECF 1. The instant motion

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1 to remand is timely under 11 U.S.C. § 1447(c) as it is within 30 days after the filing of the Notice
2 of Removal by HSBC on August 2, 2016.

3 II.

4 LEGAL STANDARD

5 11 U.S.C. §1447 (c) provides:

6 a motion to remand the case on the basis of any defect other than lack of
7 subject matter jurisdiction must be made within 30 days after the filing of the
8 notice of removal under section 1446(b)...An order remanding the case may
9 require payment of just costs and any actual expenses, including attorney
10 fees, incurred as a result of the removal.

11 The Notice of Removal was filed on August 2, 2016. The instant motion is filed within 30
12 days of the notice of removal as required under 1447(c). Additionally, TRP requests that this
13 Court award TRP actual costs and attorney fees as the removal was untimely and improper.

14 There is a strong presumption against removal jurisdiction. *Hunter v. Philip Morris*, 582
15 F.3d 1039, 1042 (9th Cir. 2009). The removing party has the burden of proof establishing that
16 removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Any doubt about
17 removal is resolved against removability. *Hawaii ex rel. Louie v. HSBC Bank Nevada, N.A.*, 761
18 F.3d 1027, 1034 (9th Cir. 2014) (quoting *Luther v. Countrywide Home Loans Serv, LP*, 533 F.3d
19 1031, 1034 (9th Cir. 2008)).

20 III.

21 LEGAL ARGUMENT

22 The removal to this Court was untimely and, as such, remand is proper. TRP does not
23 consent to jurisdiction before this Court. TRP selected a jurisdiction and HSBC is seeking a
24 different jurisdiction. The burden is on HSBC and its removal in this matter is procedurally
25 improper. The time line is simple:

- 26 1. HSBC was served on May 26, 2016. Affidavit of Service ECF 1-2 ¹

27 ¹ Plaintiff contends in abstract that the service of the summons upon it was improper
28 because it was on a local branch office ECF 1 at 2:19-28. HSBC was actually served at the
address for HSBC Bank USA as represented on its website HSBC.com. HSBC has no
registered agent in Nevada. HSBC was served in McLean, Virginia, which is not local by any
stretch of the imagination.



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2. HSBC appeared in case A-16-735894-C on June 15, 2016 and filed both a Notice of Appearance and Initial Appearance Fee Disclosure. ECF 1-3 at 11-16

3. The notice of removal is August 2, 2015.

In the Petition for Removal, HSBC alleged that there is diversity of citizenship and the amount in controversy exceeds \$75,000 and then, after seeking federal jurisdiction, informed the Court that it reserves a claim of insufficiency of service of process. Further, HSBC alleges that there is diversity because TRP is a Nevada LLC whose principals are California citizens and Defendant Daniel Ramage is a Nevada citizen. However, the document referred to, Defendant TRP Fund V, LLC's Supplemental Amended Certificate of Interested Parties filed in case 2:16-cv-00386-JCM-NJK was filed on May 17, 2016.² This disclosure precedes service on HSBC on this case. HSBC also submitted a copy of the Nevada Secretary of State web page for TRP from July 25, 2016. ECF 1-4, 2-3.

11 U.S.C. § 1446 (b)(1) provides:

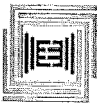
The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after service of the summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

Regardless of any other contention on removal, HSBC received a copy of the initial pleading on May 26, 2016. HSBC knows this and is well aware of this fact as HSBC retained counsel who appeared in the state court action on **JUNE 15, 2016**. Nothing has changed since that time. TRP has not moved its place of incorporation nor the citizenship of its members. The disclaimer of interest by Defendant Ramage does not change his citizenship. The cases cited to by HSBC regarding citizenship all existed prior to the filing of the state court action. The amount in controversy has not changed.

HSBC received a copy of the state court complaint in May of 2016 or, at the very latest,

² Lead counsel for HSBC, Melanie Morgan, Esq, is lead counsel for Bank of America, N.A. in 2:16-cv-00386-JCM-NJK and attempted to use the same Supplemental Amended Certificate of Interested Parties as a basis for sanctions against TRP Fund V alleging that its members were citizens of California. ECF 45 at p 3-4 in 2:16-cv-00386-JCM-NJK.

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June 15, 2016, the date its' counsel appeared in the state court action. HSBC's time to seek removal started, at the very latest, on that date and the time to remove expired on July 14, 2016. HSBC filed the petition for removal on August 1, 2016 and the Notice of Removal on August 2, 2016. A minimum of 16 days late. HSBC's petition is untimely under 11 U.S.C. § 1446 (b)(1) and TRP's motion to remand **IS TIMELY** under 11 U.S.C. § 1447 (c). This Court lacks jurisdiction as removal is untimely and improper. Further, HSBC refers to its "principal office" and its "principal place of business" . ECF 1 at 3:4-7. This is the wrong standard and is insufficient to satisfy its burden of proof of citizenship. The proper location is the main office as set forth in the articles of incorporation. *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 307 (2006). HSBC does not provide the office address. On HSBC.com, under "country contacts", the address for "HSBC Bank, USA, Inc" is McLean, Virginia. The entity located in New York City is HSBC North America Holdings Inc. HSBC was served in McLean, Virginia. HSBC's petition for removal is untimely and flawed and remand to the state court is proper.

IV.

CONCLUSION

This Court should remand this case to the Eighth Judicial District Court located in Clark County, Nevada in case A-16-735894-C. HSBC failed to timely remove this matter under 11 U.S.C. § 1146(b)(1). The motion to remand is timely filed within 30 days of the Notice of Removal. HSBC was served and appeared in the state court action and since that occurred nothing has changed in terms of the facts of the case, the citizenship of the parties, the amount in controversy or the applicable law. HSBC's petition to remove is untimely and the strong presumption against removal should apply and this case be remanded.

Dated this 5th day of August, 2016.

THE WRIGHT LAW GROUP, PC

/s/ John Henry Wright, Esq.
JOHN HENRY WRIGHT, ESQ.

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Attorneys for Plaintiff
TRP FUND IV, LLC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of August 2016, I electronically filed the **MOTION TO REMAND CASE TO STATE COURT** using the CM/ECF system, which will cause the document to be served upon the following counsel of record:

Melanie D. Morgan, Esq.
Thera A. Cooper, Esq.
AKERMAN, LLP
1160 Town Center Drive, Suite 3350
Las Vegas, Nevada 89144

/s/ Dayana Mendoza
An Employee of THE WRIGHT LAW GROUP, PC.

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